IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO.18 OF 2007

Late Popat Rajaram Gujar,
since deceased through
his legal heirs and representatives:
1-A. Smt.Latabai Popat Gujar & Ors. : Appellants
(Orig.Defendants)

V/s.

Pundlik Laxman Jadhav,
since deceased through
his legal heirs and representatives:
1-A. Smt.Shantabai Pundalik Jadhav
& Ors. : Respondents
(Orig.Plaintiffs)

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Mr.R.M.Haridas i/b. Mr.P.N.Joshi for the appellants.
Mr.A.H.Palekar for respondent nos.1-A to 1-H.

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CORAM : S.A.BOBDE, J.

DATE : JULY 10, 2007.

P.C.

1. This Second Appeal is against concurrent findings of both the Courts below that the respondent is entitled to a decree.

2. The respondent had sued for a declaration and possession which has been granted to him. The Courts below have accepted the respondent's case that the appellant is wrongfully trying to interfere with the ownership on the basis of certain mutation entries and is not entitled to possession since he is not the owner. The appellant set up a case that the land was given to him in a partition between the respondent and the appellant's mother, who was the sister of the respondent. The appellant got the land in 1990 and admittedly the partition took place between three brothers and three sisters around the year 1960. The appellant's defence of partition has also been completely disbelieved.

3. Mr.Haridas, the learned counsel for the appellants, strongly urged that the appellate Court ought to have seen that the matter is not governed by the Hindu Succession Act, but is governed by the customs and rites prevailing amongst the parties who are tribals. The appellate Court before whom the point was raised for the first time has observed that there are neither any pleadings nor proof regarding the appellants being governed by any particular custom in derogation of the Hindu Succession Act and has, therefore, declined to consider the point. In my view, the appellate Court has rightly declined to consider the

point. In any case, no question of applicability of the Hindu Succession Act arises in the present case. The appellant has raised the defence that he got the land in question by way of partition. The allegation of partition itself has been disbelieved. So, there is no question of deciding whether the partition and the shares ought to have been governed by the Hindu Succession Act or according to the tribal customs.

4. There is no merit in the second appeal and no substantial question of law arises. The appeal is dismissed.

S.A. BOBDE, J.